ciently shown. The second and third specifications must be sustained, upon the authority of U. S. v. Tanner, 147 U. S. 661, 13 Sup. Ct. 436, and U. S. v. McMahon, 164 U. S. 87, 17 Sup. Ct. 28. It is ordered that this cause be remanded to the district court, with direction to modify its judgment in pursuance of this determination. No costs in this court are allowed to either party.

JACOBUS v. UNITED STATES.

(Circuit Court, S. D. New York. March 19, 1898.)

AMENDMENT—DELAYING TRIAL—COUNTERCLAIM.

A cause which had been repeatedly continued because defendant was not ready for trial was peremptorily set for trial on a certain day. Defendant then moved for leave to amend its pleading by setting up a counterclaim, which, if allowed, made another continuance necessary, because of the absence of plaintiff's witness. *Held* that, since the issues raised by the counterclaim might be determined in an independent action, the motion should be overruled.

This was an action by John W. Jacobus against the United States. The cause was heard on motion for leave to amend the answer by setting up a counterclaim.

D. Frank Lloyd, Asst. U. S. Atty., for the motion.
Henry L. Stimson, opposed.

LACOMBE, Circuit Judge. If in no other way than by a counterclaim in this action could the government have the question determined whether or not it is entitled to recover anything from the plaintiff, the former marshal of this district, I should be inclined to allow the amendment. But, so far as I can discover, there is no obstacle to an independent action to recover whatever may be due the government, and no authorities are presented sustaining the proposition that counterclaim is the only relief. This cause has been repeatedly on the day calendar for trial, and plaintiff has always been ready for trial. The limit of all reasonable continuance on defendant's request was passed long since, and the case set peremptorily for the 1st day of the April term. To introduce a new cause of action in favor of defendant at this late stage, probably necessitating a further adjournment, since plaintiff's sole witness as to the transactions out of which counterclaim arises is now in California, would be a denial of justice. The issues now raised in the cause should be tried and disposed of without further delay. Any other controversies between the parties can be disposed of in some other action.

PATTERSON v. THOMPSON.

(Circuit Court, D. Oregon. March 24, 1898.)

1. CORPORATIONS—LIABILITIES OF DIRECTORS—LIMITATIONS OF ACTIONS—LAWS OR. § 3231.
   2 Hill's Ann. Laws Or. § 3231, providing that, "if the directors of a corporation declare and pay dividends when the corporation is insolvent, * * * such directors shall be jointly and severally liable for the debts of the corporation then existing, or incurred while they remain in office," is penal, and an action thereon is barred by the statute of limitations of three years.
2. SAME—RUNNING OF STATUTE.
   The statutory right of action against the directors of a corporation for declaring dividends when the corporation is insolvent accrues, at least, when the debt is due; and neither an agreement for an extension between the corporation and the creditor, nor a part payment by the corporation, stops the running of the statute.

This was an action by C. M. Patterson against D. P. Thompson to enforce an alleged personal liability under the Oregon statute, on the ground that defendant, as a director in a savings bank, had joined in declaring and paying a dividend while the corporation was insolvent.

U. S. G. Marquam and J. W. Whalley, for plaintiff.

Dolph, Mallory & Simon and Cox, Cotton, Teal & Minor, for defendant.

GILBERT, Circuit Judge. The plaintiff in this action seeks to hold the defendant liable for a debt of the Portland Savings Bank, under the provisions of section 3231, 2 Hill's Ann. Laws Or., which provides as follows:

"If the directors of a corporation declare and pay dividends when the corporation is insolvent, or which renders it insolvent, or diminishes the amount of its capital stock, such directors shall be jointly and severally liable for the debts of the corporation then existing or incurred while they remain in office; or if such directors shall, by any official act or conduct, fraudulently induce any person to give credit to such corporation, they shall be liable in like manner to such person for any loss he may sustain thereby; but any director who voted against such dividend or such fraudulent act or conduct, if present, or who thereafter, as soon as the same came to his knowledge, filed his objections thereto, shall be exempt from such liability."

The complaint alleges: That the defendant was a director of the bank, and that he acted with the other directors in declaring and paying dividends to stockholders on September 12, 1892, and that he made no protest against dividends declared upon December 12, 1892, and March 13, 1893. That, at the date when said dividends were declared and paid, the bank was insolvent. That on March 22, 1893, the plaintiff deposited with the bank $10,000, for which he received a certificate of deposit, payable, with interest, February 11, 1894. That on September 5, 1893, at a meeting of the board of directors, at which the defendant was present and voted in the affirmative, it was resolved that agreements be obtained from the depositors of the bank for extensions of time for the payment of their deposits, and, in pursuance of said resolution, the defendant signed an agreement, which is as follows: